

Institute for Advanced Criminal
Law Studies
v.
Harris County District Attorney’s
Office

In the District Court
Harris County, Texas
55th Judicial District

Initial Response to Motion for Summary Judgment

Judge Payne:

The Institute for Advanced Criminal Law Studies (“The Institute”) files its initial response to the Harris County District Attorney’s Office’s (“The Office’s”) motion for summary judgment filed May 19, 2025.

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Summary

The Office has failed to acknowledge, much less meet its summary-judgment burden.

- The burden of proving that information is not subject to disclosure is on the governmental body, The Office.
- The Office must first prove that statutory exceptions to disclosure apply.
- If exceptions apply, The Office must also prove that it complied with 10-day request and notice requirements.
- If The Office did not comply, The Office must prove that some applicable exceptions provides a compelling reason not to provide the information.

Introduction

This is an open-records lawsuit, in which The Institute seeks mandamus pursuant to section 552.321 of the Texas Public Information Act, Tex. Govt. Code § 552.321 (“PIA”), requiring The Office to produce information under the PIA, specifically “the Code,” which is

The computer code, in the high-level programming language (e.g. Python, C, Java, VirtualBasic) in which the Virtuada program was written; and

The conditional-formatting rules, macros, VirtualBasic, and other code included in every “Visualization” associated with Virtuada, and every “Visualization” proposed to be added to Virtuada.

and “the Video,” which is an MP4 video with filename beginning “2023 07 17 Running a Jury Panel...”.

Both of these requested records will reveal *how* The Office investigates jurors, *what* it does with jurors’ confidential personal information, and *where* it stores and fails to protect that confidential information.

Under section 552.321(a) of the PIA this Court has jurisdiction “to consider whether requested information is subject to disclosure, irrespective of whether the Attorney General has issued a ruling addressing that question.” *Harris Cnty. Appraisal Dist. v. Integrity Title Co., LLC*, 483 S.W.3d 62, 68 (Tex. App.—Houston [1st Dist.] 2015, pet. denied). In other words, the Attorney General’s ruling is not binding on this Court.

In this mandamus proceeding, the governmental body—here The Office—“has the burden to prove that the requested information is not ‘public information.’” *Fallon v. Univ. of Tex. MD Anderson Cancer Ctr.*, 586 S.W.3d 37, 48 (Tex. App.—Houston [1st Dist.] 2019, no pet.).

This lawsuit presents five broad issues of law:

1. Can The Office prove that one of its cited statutory exceptions applies to the Code?
2. Can The Office prove that one of its cited statutory exceptions applies to the Video?
3. Can The Office prove that its initial kitchen-sink letters to the Attorney General were sufficient under section 552.301 of the PIA?
4. If the kitchen-sink letters were insufficient, can The Office prove that one of its statutory exceptions provides a compelling reason to withhold the information?
5. If the kitchen-sink letters were insufficient and The Office does not have a compelling statutory reason to withhold the information, did The Office act in reasonable reliance on a written decision of the Attorney General?

On each of these five questions, the burden is on The Office. The Institute expects that after discovery is complete, The Office will not be able to meet its burdens at all.

In its motion for summary judgment, The Office had the burden of *conclusively establishing* the answers to these questions. It cannot do so, and has not even acknowledged its burden. The Office's motion is accordingly at best premature, at worst frivolous.

The Office’s summary-judgment evidence is deficient.

This Court need not consider the merits of The Office’s motion, because The Office has provided no summary-judgment evidence—neither “deposition transcripts, interrogatory answers, [or] other discovery responses,” Tex. R. Civ. P. 166a(c)(i), nor “pleadings, admissions, affidavits, stipulations of the parties, [or] authenticated or certified public records,” Tex. R. Civ. P. 166(c)(ii), in support of summary judgment.

The Office is not entitled to judgment as a matter of law.

Even if The Office were able to correct the deficiencies in its evidence, its submission to this Court contains no evidence in support of its burden—no evidence that either the Video or the Code is exempt from disclosure.

Instead of addressing any of the elements it is required to prove, The Office in its motion asks this Court to simply trust The Office and the Attorney General that the Video and the Code are not subject to disclosure.

This Court is not bound by the Attorney General’s rulings, nor by The Office’s representations of what the Video and the Code are. It cannot simply trust The Office and the Attorney General, but instead

must consider independently whether the Video and the Code are subject to disclosure.

To do so, this Court will have to see the Video and the Code—evidence The Office does not want this Court to see.

a. The Code is subject to disclosure.

With regard to the Code, The Office relies on a 1990 determination by the Attorney General that computer code is information but is not subject to the PIA for a reason that does not appear in the PIA.

All valid reasons that information might not be disclosable are within the PIA. *See* Tex. Gov't Code § 552.301(a) (“one of the exceptions under Subchapter C”). The Attorney General is not allowed to make up exceptions to disclosure. The Attorney General’s “information used solely for the purpose of maintenance, manipulation, or protection of public property” exception to disclosure is not statutory, is made up, and is not valid.

For a statutory PIA exception, The Office relies on section 552.108. Whether the Code is “the mental impressions or legal reasoning of an attorney representing the state” is a question that will require this Court to review the information and subject it to adversarial testing. The Office’s and Ken Paxton’s representations are not enough.

b. The Video is subject to disclosure.

With regard to the Video, The Office again relies on section 552.108. As with the Code, whether the Video is “the mental impressions or legal reasoning of an attorney representing the state” is a question that will require this Court to review the information and subject it to adversarial testing. As with the Code, The Office’s and Ken Paxton’s representations are not enough.

Also with regard to the Video, The Office relies on section 552.101 of the PIA, and the fact that The Office has, in the Video, preserved confidential juror information such as social security numbers—an admission of misconduct so egregious that we must take it as true.

The Institute is not interested in jurors’ confidential personal information. What The Office *does* with jurors’ confidential personal information, and how it stores and fails to protect that confidential information, however, are subjects of great public interest.

The Office claims that redaction of jurors’ confidential personal information is “infeasible” (The Office’s *Motion for Summary Judgment* 8) and asks this Court, again, to trust it.

Whether the Video can be edited in a way that allows the public—including jurors—to know what The Office does with their confidential

personal information, without disclosing any such information, is, again, a question that requires this Court to review the information and subject it to adversarial testing.

c. The Office’s ten-day letters were insufficient, so that it must prove a compelling reason to withhold the information.

If its initial “ten-day letters” to the Attorney General were not sufficient, then The Office in this proceeding must prove not only that a statutory exception applies, but also that “there is a compelling reason to withhold the information,” Tex. Gov’t Code § 552.302.

The Office will have to prove that its initial kitchen-sink letters to the Attorney General sufficed to preserve its objections to the disclosure of the Videos and the Code.

On this, too, The Office asks that this court trust it. Of course The Office *wants* its ten-day letters to suffice, and of course The Office *wants* this Court to simply trust it. But they do not, and this Court cannot.

When The Office asked the Attorney General to “determine whether the information sought ... is exempt from disclosure under *all available exceptions*” (The Office’s *Motion for Summary Judgment* 4) the correct answer was simply “no.” There is no information that is exempt from disclosure under *all* available exceptions.

Even if The Office’s request could be read as for a determination whether the information sought was exempt from disclosure under *any* available exception instead of “all available exceptions,” that would not be a sufficient request for a decision on any particular exception or exceptions. The purpose of the ten-day letter asking for a determination is not only to request the determination, but also to inform the member of the public who requested the information of the governmental body’s contentions. A kitchen-sink letter does not give the requestor—here, The Institute—the notice required by section 552.301(d).

The Institute will brief this more fully in its own motion for summary judgment, once a reasonable time for discovery has passed or sooner if the Court wishes. For the moment, it only marks the issue for this Court.

d. There is no compelling reason for The Office to withhold the information.

The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

Tex. Gov't Code Ann. § 552.001(a). Harris County jurors—the “people” of section 552.001(a)—are entitled to know how their government is using and abusing their confidential information. The interest protected by section 552.108 is not a compelling reason to overcome that interest.

Conclusion

- The burden of proving that information is not subject to disclosure is on the governmental body, The Office.
- The Office must first prove that statutory exceptions to disclosure apply.
- If exceptions apply, The Office must also prove that it complied with 10-day request and notice requirements.
- If The Office did not comply, The Office must prove that some applicable exceptions provides a compelling reason not to provide the information.

To meet its burden, The Office will have to disclose the Video and the Code, which it hasn't yet provided either to The Institute¹ or to the Court.

The Office has failed to satisfy or even acknowledge its burden.

Prayer

The Institute prays that this Court deny The Office's motion.

Certificate of Service

I emailed a copy of this motion to counsel for Respondent before filing it with this Court.

Thank you,



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1. In a separate motion, The Institute seeks the protective order that the PIA allows so that the parties can litigate a mandamus action without fear that exempt information will become public. *See* Tex. Gov't Code § 552.302.